

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-300

June 4, 2002

PUBLIC UTILITIES COMMISSION
Inquiry into Modifications of Portfolio
Requirement and Disclosure Rules
(Chapters 311 and 306)

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

SUMMARY

Through this Notice, we initiate an Inquiry for the purpose of considering modifications to our Eligible Resource Portfolio Requirement rule (Chapter 311) and Uniform Information Disclosure rule (Chapter 306). The consideration of rule changes at this time is motivated by the recent implementation of a regional certificate trading system that will allow market participants to obtain “attributes” (e.g. resource type, emissions characteristics) of produced electricity separate from the energy commodity. We will also take this opportunity to examine all other aspects of the rules and to consider any appropriate amendments that may improve their operation.

BACKGROUND

Chapters 311 and 306 are among a series of rules that the Commission promulgated prior to March 1, 2000 to implement Maine’s electric restructuring act. Both rules are the result of explicit legislative directives. Chapter 311 implements the requirement that all licensed competitive electricity providers (CEP) satisfy at least 30% of their retail load in Maine through “eligible resources,” as defined by statute. 35-A M.R.S.A. § 3210. Chapter 306 complies with the legislative mandate that information be disseminated to enhance consumers’ ability to effectively make choices in the competitive electricity market. 35-A M.R.S.A. § 3203(3).

In developing the rules, the Commission considered whether CEPs should be allowed to demonstrate compliance through the possession of “certificates” or “tradable credits” that represent the environmental attribute of electricity separate from the energy. In the context of Chapter 311, we decided not to allow for tradable credits due, in part, to the lack of a region-wide system for administration and verification. *Order Provisionally Adopting Rule*, Docket No. 98-619 at 17-18 (Dec. 2, 1998). Similarly, we did not allow for tradable credits or certificates in Chapter 306. Our disclosure rule was designed to closely mirror the NECPUC model disclosure rule. *Order Provisionally Adopting Rule*, Docket No. 98-708 at 2-3 (February 23, 1999). This model rule, which was the result of efforts to promote regional uniformity, relied on the “tracking” of the

contractual paths of kilowatt-hours for verification rather than the trading of attribute credits or certificates separate from the energy sale.

Subsequent to the adoption of the rules, NEPOOL has been working to develop a tradable attribute certificate system. Such a system, known as the Generation Information System or GIS, is now being implemented. The system has been specifically designed to support various public policy initiatives of the New England states, including Maine's eligible resource portfolio and uniform disclosure requirements. Because of this development, we initiate this Inquiry to examine how the use of tradable certificates pursuant to GIS should be incorporated into our portfolio and disclosure rules. In the event it appears that changes to the rules should be made to accommodate GIS, we will follow this Inquiry with a formal rulemaking process.¹

In addition to considering changes to the rules as a result of the implementation of GIS, we will use this Inquiry to consider other possible changes as well. Chapter 311 and 306 have now been in place for more than two years and it is thus appropriate for us to conduct a comprehensive examination of how the rules have operated since the beginning of retail access and to determine whether changes should be made in light of actual experience. As part of this Inquiry, we therefore solicit comment from interested persons on any aspect of the rules that may be improved.

REQUEST FOR COMMENT

We will begin this Inquiry by requesting written comment from interested persons on the issues and questions stated below. We also encourage interested persons to comment on any other issue or make any other recommendation concerning Chapters 311 and 306. We request that written comments be filed by June 26, 2002. Interested persons may also file reply comments by July 10, 2002. All comments filed in this docket can be obtained through the Commission's virtual case file, www.state.me.us/mpuc. After review of the comments, we may schedule a meeting of interested persons for further input before proceeding to a formal rulemaking.

GIS-Related Comments²

-Should the Commission modify Chapters 311 and 306 to allow CEPs to verify compliance through GIS?

-Should GIS be the only means of verification?

¹ Both rules have been designated "major substantive" and therefore any amendments must ultimately be approved by the Legislature.

² GIS is the result of efforts by NEPOOL to implement a regional certificate trading system and will thus be applicable in the NEPOOL control area. The system will not operate in the northern Maine market. Accordingly, our questions regarding GIS only apply to CEPs operating in the NEPOOL market.

-What changes to the rules should be made to allow CEPs to verify compliance through GIS? Under GIS, what documentation should CEPs be required to file with the Commission to demonstrate compliance?

-It is our understanding that the GIS certificate trading will occur for electricity transactions back to the beginning of calendar year 2002. Should GIS be used as a means of verification under Chapters 311 and 306 for calendar year 2002? At what point in time do CEPs need to know whether GIS certificates may be used for verification for purposes of the Maine rules.

-GIS will not be applicable in the northern Maine market. Should the Commission act to initiate discussions on the development of a GIS-type system for the northern Maine market, or, due to the small size of the market, would the cost of such a system likely outweigh the benefits?

-Should qualifying facilities (QF) that have existing contracts with utilities be required to transfer their certificates to the utility so that the certificates can be provided to those who purchase the QF entitlement under Chapter 307 of the Commission's rules? If so, how should such a requirement be implemented?

-Are there any mechanisms within GIS to verify that the information on a generator's certificates (e.g. compliance with a particular state's portfolio requirement, emissions characteristics) is accurate? Should the Commission's rules have such a mechanism, and if so, what should it be?

-How does GIS establish a CEP's resource mix and emissions applicable to that CEP's operation in a particular state? Does this occur through a GIS "sub-account" for the particular state? Should all CEPs in Maine be required to have a LSE account and a Maine sub-account?

-Regarding ch.306 § 2(B)(4)(a)(i)(ii)(iv) (resource mix): Does GIS negate the relevance of the distinction between "Known Resources" and "System Power?" Should the certificates obtained by or allocated to CEPs under GIS be the manner in which a CEP's resource portfolio is determined? If the concept of system power is not negated, how should it be determined?³

- Regarding ch.306 § 2(B)(4)(a)(v) (imports): How does GIS accommodate attributes for electricity imports from outside the region? Under GIS, is there any need for Chapter 306's requirement that resource mix and emission characteristics be the

³ Currently, "System Power" for purposes of Chapter 306 is based on 1998 regional mix data contained in a November 1999 Massachusetts Department of Telecommunications and Energy (DTE) letter. See *Order*, Docket No 98-708 (Feb. 29, 2000).

exporting region's system mix. If so, how should resource mix and emission characteristics for imports be determined?

- Regarding ch.306 § 2(B)(4)(a)(vi) (product differentiation): How can GIS be used to verify the accuracy of the resource mix and emission characteristics when a CEP markets two or more distinct products in Maine?

-Regarding ch.306 § 2(B)(4)(c)(iii) (average emission rates): Chapter 306 requires that certain emissions of each CEP be compared to the "New England regional average emission rate." Will GIS produce regional average emission rates that can be used for purposes of the rule?⁴

- Regarding ch.306 § 2(B)(4)(c)(iv) (emission rates for specific units): Does GIS negate the need for the Commission to identify annual emission rates for individual generating units as specified in this provision? Is the determination of annual emission rates in the absence of Commission-identified rates as specified in this provision of the rule inconsistent with GIS?

- Regarding ch.306 § 2(B)(4)(c)(v) (storage and cogeneration facilities): Are the provisions to determine the emissions of energy storage facilities and cogeneration facilities inconsistent with GIS?

-Regarding ch. 311 § 4(C)(D) (multi-fuel and pumped storage facilities): Are these provisions inconsistent with GIS? Does GIS negate the need for these provisions?

Comments on Other Aspects of Rules

-Chapter 306 was designed to mirror as closely as possible the NECPUC model disclosure rule. This was done to promote regional consistency so as to minimize the cost of compliance. At this point in time, should maintaining a rule that mirrors the model rule or disclosure rules in other states be a major consideration? If so, should Maine take steps to encourage uniformity within the region?

-Regarding ch. 306 § 2(B)(2)(a) (average prices): The rule requires that average time-of-use and seasonal prices to be based on a single, generic New England load profile. Because of the unavailability of generic New England load profiles, the Commission waived this provision of the rule and required all CEPs to use a single state-wide profile based on Central Maine Power Company's load profiles (regardless of the customer's service territory). *Order*, Docket No. 98-708 at 1-2 (Feb. 29, 2000). Should the approach in the February 2000 Order be incorporated into the rule or should some other approach be adopted?

⁴ Currently, CEPs are required to use average emission rates specified in an August 1998 Massachusetts DTE letter. See *Order*, Docket No 98-708 (Feb. 29, 2000).

-Subsequent to the initial enactment of Maine's Restructuring Act, the Legislature modified the Act to provide that all CEPs (regardless of the customer sector they serve):

Must provide at least once annually to a customer any information disclosures required by the commission by rule pursuant to subsection 3 [of section 3202];

35-A M.R.S.A. § 3202(4-A). To date, we have interpreted this provision to require CEPs who serve customers in the medium and large classes to provide a label similar to those required to be provided to customers in the small class under the requirements of Chapter 306. Can this statutory provision be interpreted to allow the Commission to specify in the rule that CEPs serving only large and medium customers are not required to provide labels? If not, should the Legislature be asked to remove the statutory requirement that label information be sent to all customers?

-Chapter 306 currently requires that emission data for NO_x, SO₂, and CO₂ be included on the disclosure label. It is our understanding that in addition to these emissions, GIS would allow for emission data for CO, PM and PM10, mercury, and volatile organic compounds. Should the rule be amended to require that data for any of these additional emissions to be included on the label?

-Should any of the comparative emission data requirements currently in the rule (NO_x, SO₂, and CO₂) be eliminated?

-Should the disclosure rule contain any requirement for comparative emissions data at all upon the rationale that a generating resources that might have relatively low emission rates may cause other types of environmental damage, thus potentially causing customer confusion with respect to environmental damage associated with particular generating units?

- Regarding ch.306 § 2(B)(4)(b)(ii) (resource categories): Should the categories of resources types required to be listed on the label be modified? Should there be separate categories for large and small hydro; if so, at what size should the distinction be made? Should the label reflect which resources satisfy Maine's portfolio requirement, and, if so, how?

- Regarding ch.306 § 2(B)(4)(a)(ii) (label reporting period): Should the rule maintain the prior 12 months as the reporting period? Should the reporting period instead be the prior calendar year so as to remove potential confusion that might result from a label not showing at least 30% "eligible" due to the mismatch in reporting periods (30% portfolio rule requires compliance over the calendar year)?

- Regarding ch.306 § 2(B)(4)(c)(v)(cc) (CO₂ offsets): Should the rule be modified to allow for complete CO₂ offsets for all biomass plants, rather than the case-by-case approach contained in the current rule?

-Regarding eligibility for the portfolio requirement, should landfill gas be considered biomass for purposes of the portfolio requirement rule?

-The portfolio requirement statute, 35-A M.R.S.A. § 3210, and rule, Chapter 311, include as one of the eligible resources “generators fueled by municipal solid waste in conjunction with recycling.” Should “in conjunction with recycling” be defined in the rule? If so, how?

Dated at Augusta, Maine, this 4th day of June, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond